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Bridging the Gap Between DACA and the DREAM: The BRIDGE Act, What It Means, and Why It Matters

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BRIDGING THE GAP BETWEEN DACA AND THE DREAM: THE BRIDGE ACT, WHAT IT MEANS, AND WHY IT MATTERS

*Ellen E. Findley**

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I. INTRODUCTION

Every day while I was working at a small family-based immigration clinic over the summer of 2017 I had to answer the same question: What will happen to me if Deferred Action for Childhood Arrivals (“DACA”) ends? At that time, the fate of the program was still up in the air, and my clients’ fears were palpable. I wanted to be able to reassure them, but ethics demanded that I tell them the truth: the program could end at the whims of the administration.

People on both sides of the aisle were clamoring about whether DACA should end or continue. However, their arguments soon became irrelevant. Hundreds of thousands of young people were left with a deadline for their safety in the United States. *ThinkProgress* estimates that approximately 36,000 undocumented youths failed to apply for renewal of their DACA protections by the October 5, 2017 deadline, which means that their protections were set to expire before March 2018.¹

Then, in December of 2016, Sen. Lindsey Graham (R) introduced Senate Bill 3542, the Bar Removal of Individuals who Dream and Grow our Economy Act (“BRIDGE”), also known as the “BRIDGE Act.”² Sen. Graham introduced a slightly modified version of the same bill during the first session of the 115th Congress on January 12, 2017.³ The bill sought to offer provisional protected presence⁴ to undocumented immigrants who arrived in the U.S. as children, including current DACA recipients.⁵

¹ Esther Yu Hsi Lee, *On DACA renewal deadline day, tens of thousands of DREAMers lost deportation relief*, THINKPROGRESS (Oct. 5, 2017, 11:16 AM), <https://thinkprogress.org/42000-daca-recipients-miss-deadline-7b203d4772cf/>.

² Bar Removal of Individuals who Dream and Grow our Economy Act, S. 3542, 114th Cong. (2016).

³ Bar Removal of Individuals who Dream and Grow our Economy Act, S. 128, 115th Cong. (2017).

⁴ “Provisional protected presence” means that the undocumented immigrant whose application under the BRIDGE Act is granted will not be considered to be unlawfully present throughout the duration of the BRIDGE Act’s protections. S. 128.

⁵ S. 128.

The eligibility requirements for the provisional protected presence offered by the BRIDGE Act echo⁶ those for recipients of DACA,⁷ but the relief offered is more durable as a legislative option than that offered by prosecutorial discretion.⁸ With the Department of Homeland Security's recent decision to rescind DACA, now, more than ever, is the time to evaluate the proposed alternatives to this program that touches the lives of so many.

In this article, I will discuss the history of the BRIDGE Act as the spiritual successor to the failed DREAM Act. I will also discuss the birth and death of DACA, particularly as it arose from congressional inaction regarding immigration reform. Then, I will explain the uncertain future that the DACA program is currently facing in light of recent court cases and current events.⁹ Next, I will weigh the costs and benefits of passing the BRIDGE Act, focusing (1) on the difficulties that DACA already imposed and (2) on the perpetuation of the myth of the model minority. Following that, I will compare and contrast how the U.S. treats undocumented youths with the solutions available to similarly situated youths in Canada. I will ultimately conclude that

⁶ S. 128.

⁷ S. 3542.

⁸ Prosecutorial discretion means the choice that the United States federal government has whether to bring charges against a noncitizen. In the context of immigration law, "prosecutorial discretion" refers to the choice not to pursue deportation proceedings against or otherwise arrest or remove a noncitizen. *Discretion*, BLACK'S LAW DICTIONARY (10th ed. 2014); Shoba Sivaprasad Wadhia, *The History of Prosecutorial Discretion in Immigration Law*, 64 AM. U. L. REV. 1285, 1286 (2015) ("When an immigration officer from [the Department of Homeland Security] chooses not to bring legally valid charges against a person because of the person's family ties in the United States or other equities, prosecutorial discretion is being exercised favorably."). See also Declaration of Shoba Sivaprasad Wadhia, New York v. Trump, No. 17 Civ. 5228 (E.D.N.Y. Dec. 15, 2017) (citing Memorandum from Sam Bernsen, General Counsel, Immigration and Naturalization Service, Legal Opinion Regarding Service Exercise of Prosecutorial Discretion (July 15, 1976)) (arguing that prosecutorial discretion has been used in myriad instances by the federal government).

⁹ This article was written between the rescission of DACA and the issuance of Judge Alsup's opinion in January of 2018. For ongoing updates in the rapidly changing world of immigration law, see PENN STATE LAW CENTER FOR IMMIGRANTS' RIGHTS CLINIC, <https://pennstatelaw.psu.edu/practice-skills/clinics/center-immigrants-rights> (last visited Jan. 10, 2019).

despite its drawbacks, undocumented children, and indeed the country at large, need the protections that the BRIDGE Act guarantees.

II. WHAT IS THE BRIDGE ACT?

The BRIDGE Act grants provisional protected presence to specific undocumented youths who meet certain criteria.¹⁰ The eligibility criteria are as follows:

An alien is eligible for provisional protected presence under this section and employment authorization if the alien—

- (1) was born after June 15, 1981;
- (2) entered the United States before attaining 16 years of age;
- (3) continuously resided in the United States between June 15, 2007, and the date on which the alien files an application under this section;
- (4) was physically present in the United States on June 15, 2012, and on the date on which the alien files an application under this section;
- (5) was unlawfully present in the United States on June 15, 2012;
- (6) on the date on which the alien files an application for provisional protected presence—
 - (A) is enrolled in school or in an education program assisting students in obtaining a regular high school diploma or its recognized equivalent under State law, or in passing a general educational development exam or other State-authorized exam;
 - (B) has graduated or obtained a certificate of completion from high school;
 - (C) has obtained a general educational development certificate; or
 - (D) is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
- (7) has not been convicted of—

¹⁰ S. 3542.

- (A) a felony;
- (B) a significant misdemeanor; or
- (C) three or more misdemeanors not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct; and
- (8) does not otherwise pose a threat to national security or a threat to public safety.¹¹

If these provisions seem familiar, it is because they are: much of the language of the bill is lifted almost verbatim from the DACA eligibility requirements.¹² Even the prerequisite dates for entry and continuous physical presence are carried over verbatim.¹³

Those who qualify for this provisional protected presence will not be removed from the country for three years. During their provisional protected presence, they will not accrue “unlawful presence.”¹⁴ Additionally, they will be eligible for employment authorization, which means that they will be able to work legally.¹⁵

A. A Brief History of the DREAM Act

The BRIDGE Act is far from the first of its kind: undocumented youths, particularly those who exhibit academic and economic potential, garner sympathy from parties on both sides of the aisle. The Development, Relief, and Education for Alien Minors

¹¹ S. 3542.

¹² See Janet Napolitano, Dep’t of Homeland Security, Memorandum Letter on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

¹³ See *id.*

¹⁴ “Unlawful presence” refers to a period of time when a noncitizen is in the United States without legal status. Immigration and Nationality Act (INA) § 212(a)(9)(B)(ii), 8 U.S.C.A. § 1182(a)(9)(B)(ii) (West 2016). This can occur when a noncitizen overstays his or her visa or when a noncitizen enters the United States without inspection and later leaves and reenters. If a noncitizen accrues a certain number of days of unlawful presence, he or she may be subjected to temporary or permanent bars from reentering the United States. See INA § 212(a)(9)(B)-(C), 8 U.S.C.A. § 1182(a)(9)(B)-(C) (West 2016).

¹⁵ S. 128.

(“DREAM”) Act in its various iterations predates the BRIDGE Act¹⁶ and in fact led to the introduction of DACA.¹⁷

The DREAM Act sought to provide a path to citizenship for undocumented youths in the U.S.¹⁸ When Senator Orrin Hatch (R) first introduced the DREAM Act in the Senate in 2001, the requirements for cancellation of removal¹⁹ and adjustment of status²⁰ were as follows: the applicant (1) must apply for DREAM Act relief within two years of its enactment; (2) must not be twenty-one years old at the time of his or her application; (3) must be a student at a qualifying institution of higher education; (4) must have no less than five years of continuous physical presence immediately prior to the DREAM Act’s enactment; (5) must show “good moral character”²¹ during that continuous physical presence; and (6) must not be subject to certain inadmissibility or deportability grounds.²²

However, Congress fought and stalled, leaving undocumented youths without recourse. Former President Barack Obama pointed to the congressional inaction that led him to implement DACA.²³

It should be noted that the DREAM Act is still relevant today. Another version was introduced in the Senate in July of 2017 by Sen.

¹⁶ Development, Relief, and Education for Alien Minors Act, S. 1291, 107th Cong. (2001).

¹⁷ See Barack Obama, FACEBOOK (Sept. 5, 2017, 2:51 PM), <https://www.facebook.com/barackobama/posts/10155227588436749>.

¹⁸ S. 1291.

¹⁹ “Cancellation of removal” refers to a form of relief from removal in which the proceedings undertaken to deport a noncitizen from the United States are cancelled by the United States Attorney General. Immigration and Nationality Act (INA) § 240A, 8 U.S.C.A. § 1229b (West 2016).

²⁰ “Adjustment of status” refers to the process that a noncitizen undergoes when attempting to become a lawful permanent resident (“LPR”) after obtaining another kind of status. See Immigration and Nationality Act (INA) § 245, 8 U.S.C.A. § 1255 (West 2016). Adjustment of status can either be an affirmative action whereby the applicant directly applies for LPR status after, for example, marrying a United States citizen, or a form of relief from removal. See INA § 245; INA § 240A(b), 8 U.S.C.A. § 1229b(b) (West 2016).

²¹ S. 1291.

²² *Id.*

²³ Obama, *supra* note 17.

Lindsey Graham (R),²⁴ who introduced the BRIDGE Act.²⁵ The current DREAM Act bill allows the adjustment of status to conditional permanent residence²⁶ for noncitizens (1) who will have had at least four years of continuous physical presence by the enactment of the bill; (2) who entered the U.S. prior to their eighteenth birthdays; (3) who are not subject to specified inadmissibility grounds and have not committed certain criminal acts; and (4) are currently enrolled in or recently completed a qualified educational program.²⁷ Additionally, DACA recipients would be eligible for cancellation of removal and adjustment of status to conditional permanent residence so long as they have not committed acts which would disqualify them from receiving DACA.²⁸ The conditional permanent residence conferred by the 2017 version of the DREAM Act would last for eight years.²⁹ However, as of the composition of this comment, the only action taken on it has been its reading on the day of its introduction and its referral to the Committee on the Judiciary.³⁰

Why, then, should Congress pass the BRIDGE Act when the DREAM Act would cover both current DACA recipients and an even broader category of undocumented youths who do not meet the cutoff date requirements for DACA?³¹ The answer lies in the very thing that spurred the Obama Administration to create DACA to begin with: congressional inaction.³²

²⁴ Dream Act of 2017, S. 1615, 115th Cong. (2017).

²⁵ Bar Removal of Individuals who Dream and Grow our Economy Act, S. 128, 115th Cong. (2017).

²⁶ Conditional permanent residence is a form of lawful permanent residence that subjects the recipient to some sort of conditional basis. Immigration and Nationality Act (INA) § 126, 8 U.S.C.A. § 1186a (West 2016).

²⁷ S. 1291.

²⁸ *Id.*

²⁹ *Id.*

³⁰ CONGRESS, ACTIONS, S. 1615, <https://www.congress.gov/bill/115th-congress/senate-bill/1615/all-actions>.

³¹ *See* S. 1291.

³² Obama, *supra* note 17. *See also* Wadhia, *supra* note 8 at 1292–93.

B. The Rise and Fall of DACA

Eventually, after waiting for a congressionally approved DREAM Act that never came,³³ on June 15, 2012, then-U.S. Secretary of Homeland Security Janet Napolitano issued a memorandum announcing that the Department of Homeland Security was initiating a program to exercise prosecutorial discretion in regards to undocumented immigrants who arrived in the U.S. as children.³⁴ This program became known as DACA. Under this directive, DACA recipients would not be deported for two (2) years and would acquire a Social Security card as well as employment authorization for the duration of their DACA protection.³⁵

However, DACA is not a legal status.³⁶ It is a mere protection from deportation.³⁷ Prosecutorial discretion is a last resort for most immigrants due to its “tenuous” nature because it is not an endowed right.³⁸ It is, by its very nature, discretionary.³⁹ If two applicants with identical qualifications who meet all the eligibility requirements of DACA apply for DACA, one may be granted DACA status and the other denied.⁴⁰ Prosecutorial discretion therefore can be unpredictable and non-uniform.⁴¹ Furthermore, prosecutorial discretion merely entails the lack of pressing immigration charges against a noncitizen—it does not confer any actual rights, merely the benefit of no deportation proceedings.⁴²

The eligibility requirements for DACA are as follows:
[A qualifying candidate]

³³ Obama, *supra* note 17.

³⁴ Napolitano, *supra* note 12.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Wadhia, *supra* note 8 at 1286.

³⁹ *See id.*

⁴⁰ *See* U.S. CITIZENSHIP AND IMMIGR. SERV., FREQUENTLY ASKED QUESTIONS: DHS DACA FAQs, <https://www.uscis.gov/archive/frequently-asked-questions> (last visited July 16, 2018).

⁴¹ *See* Wadhia, *supra* note 8 at 1286.

⁴² *See Discretion*, BLACK’S LAW DICTIONARY (10th ed. 2014); Wadhia, *supra* note 8 at 1286.

- came to the United States under the age of sixteen;
- has continuously resided in the United States for at least five years preceding the date of this memorandum and is present in the United States on the date of this memorandum;
- is currently in school, has graduated from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
- has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
- is not above the age of thirty.⁴³

The Obama administration further attempted to aid undocumented immigrants in 2014 by attempting to expand DACA to include a similar program, Deferred Action for Parents of Americans and Lawful Permanent Residents (“DAPA”). The expansion planned to remove the age cap,⁴⁴ to extend the length of DACA protections from two (2) years to three (3) years, and to move the required date of entry from June 15, 2007, to January 1, 2010.⁴⁵ This expansion and new program were then challenged in *Texas v. United States*, resulting in an injunction that halted enforcement of the DACA expansion and DAPA implementation nationwide.⁴⁶

The U.S. District Court for the Southern District of Texas discussed deferred action as a whole in its opinion, stating:

Deferred action is not a status created or authorized by law or by Congress, nor has its properties been

⁴³ Napolitano, *supra* note 12.

⁴⁴ The “age cap” refers to the requirement that applicants for DACA be born after June 15, 1981. The DACA expansion would have modified this requirement.

⁴⁵ U.S. CITIZENSHIP AND IMMIGR. SERV., YOU MAY BE ABLE TO REQUEST EXPANDED DACA. WANT TO LEARN MORE? (2015).

⁴⁶ See *Texas v. United States*, 86 F. Supp. 3d 591, 591 (S.D. Tex. 2015).

described in any relevant legislative act. Secretary Johnson's DAPA Memorandum states that deferred action has existed since at least the 1960s, a statement with which no one has taken issue. Throughout the years, deferred action has been both utilized and rescinded by the Executive Branch.⁴⁷

The history of deferred action as a tool used in immigration enforcement has been contentious long before the present instance.⁴⁸ Even though the Court ultimately allowed for an injunction to be imposed on DAPA, the Court acknowledged:

To ameliorate a harsh and unjust outcome, the INS may decline to institute proceedings, terminate proceedings, or decline to execute a final order of deportation. This commendable exercise in administrative discretion, developed without express statutory authorization, originally was known as nonpriority and is now designated as deferred action. A case may be selected for deferred action treatment at any stage of the administrative process. Approval of deferred action status means that, for . . . humanitarian reasons . . . no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated.⁴⁹

The Court also recounted the frustrations that the federal government and individual states have encountered while trying to follow current immigration laws:

[T]he Plaintiffs allege that the Government has created this problem, but is not taking any steps to remedy it. Meanwhile, the States are burdened with ever-increasing costs caused by the Government's

⁴⁷ *Texas*, 86 F. Supp. 3d at 612.

⁴⁸ See Declaration of Shoba Sivaprasad Wadhia, *New York v. Trump*, No. 17 Civ. 5228 (E.D.N.Y. Dec. 15, 2017); Wadhia, *supra* note 8 at 1285–1302.

⁴⁹ *Texas*, 86 F. Supp. 3d at 612–13 (quoting *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 484(1999) (citation omitted)).

ineffectiveness. The frustration expressed by many States . . . is palpable. It is the States' position that each new wave of illegal immigration increases the financial burdens placed upon already-stretched State budgets.⁵⁰

The U.S. Court of Appeals for the Fifth Circuit upheld the decision to impose a preliminary injunction on DAPA and the DACA expansion.⁵¹ The U.S. Supreme Court issued a remarkably short opinion, stating, "The judgment is affirmed by an equally divided Court."⁵²

During his presidential campaign, candidate and now-President Donald Trump often decried DACA and promised to end the program if he took office.⁵³ President Trump was sworn into office in January of 2017.

Amidst protests and vocalized concerns, September 5th finally arrived. On the morning of the impending announcement, President Trump took to Twitter to make a comment: "Congress, get ready to do your job - DACA!"⁵⁴

Later that day, the DHS released a memorandum detailing the rescission of DACA. Citing an inability to produce evidence that U.S. Citizenship and Immigration Services (USCIS) had denied any DACA

⁵⁰ *Texas*, 86 F. Supp. 3d at 630.

⁵¹ *Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015).

⁵² *United States v. Texas*, 136 S. Ct. 2271, 2272 (2016).

⁵³ Katie Reilly, *Here's What President Trump Has Said About DACA in the Past*, TIME (Sept. 5, 2017), <http://time.com/4927100/donald-trump-daca-past-statements/>.

⁵⁴ Donald Trump (@realDonaldTrump), TWITTER (Sept. 5, 2017, 8:04 AM), <https://twitter.com/realDonaldTrump/status/905038986883850240>. See Defendants' Supplemental Submission and Further Response to Plaintiffs' Post-Briefing Notices at 4, *James Madison Project v. Dep't of Justice*, No. 1:17-cv-00144-APM (D.D.C. Nov. 13, 2017) ("[T]he government is treating the President's statements . . . whether by tweet, speech or interview – as official statements of the President of the United States.").

applicants purely for discretionary reasons,⁵⁵ Acting Secretary Elaine C. Duke explained her reasoning:

The Attorney General sent a letter to the Department [of Homeland Security] on September 4, 2017, articulating his legal determination that DACA ‘was effectuated by the previous administration through executive action, without proper statutory authority and with no established end-date, after Congress’ repeated rejection of proposed legislation that would have accomplished a similar result. Such an open-ended circumvention of immigration laws was an unconstitutional exercise of authority by the Executive Branch.’ The letter further stated that because DACA ‘has the same legal and constitutional defects that the courts recognized as to DAPA, it is likely that potentially imminent litigation would yield similar results with respect to DACA.’ Nevertheless, in light of the administrative complexities associated with ending the program, he recommended that the Department wind it down in an efficient and orderly fashion, and his office has reviewed the terms on which our Department will do so.⁵⁶

The battle was over: DACA was being rescinded.⁵⁷

The DHS noted, though, that instead of merely cancelling the program, the DHS was gradually winding it down.⁵⁸ The DHS announced that it would continue to review the DACA applications that had already been filed but would no longer accept initial DACA requests.⁵⁹ Renewal requests, however, would be processed on a case-by-case basis so long as the requests were received by October 5,

⁵⁵ Elaine C. Duke, Dep’t of Homeland Security, Memorandum on Rescission Of Deferred Action For Childhood Arrivals (DACA) (Sept. 5, 2017), <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

2017.⁶⁰ This option was only open to DACA recipients whose current protections would expire by March 5, 2018.⁶¹ Additionally, DACA recipients could no longer obtain advance parole.⁶² DACA recipients' protections were not immediately terminated: rather, their protections, including work authorization, would merely expire.⁶³

Later that evening, the President again tweeted, "Congress now has 6 months to legalize DACA (something the Obama Administration was unable to do). If they can't, I will revisit this issue!"⁶⁴

A few days later, he added, "Does anybody really want to throw out good, educated and accomplished young people who have jobs, some serving in the military? Really!"⁶⁵ The President then continued, ". . . [t]hey have been in our country for many years through no fault of their own - brought in by parents at young age. Plus BIG border security."⁶⁶ Even to the man who had promised to end the very program that protected them, undocumented youths presented a sympathetic case.⁶⁷

Sen. Mitch McConnell (R), current Republican Senate Majority Leader, issued a statement following the rescission:

President Obama wrongly believed he had the authority to re-write our immigration law. Today's action by President Trump corrects that fundamental

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Advance parole refers to a grant of permission by the government to allow a noncitizen to enter the United States. *See* Immigration and Nationality Act (INA) § 212(d)(5), 8 U.S.C.A. § 1182(d)(5) (West 2016); Duke, *supra* note 55.

⁶³ Duke, *supra* note 55.

⁶⁴ Donald Trump (@realDonaldTrump), TWITTER (Sept. 5, 2017, 7:38 PM), <https://twitter.com/realDonaldTrump/status/905228667336499200>.

⁶⁵ Donald Trump (@realDonaldTrump), TWITTER (Sept. 14, 2017, 5:28 AM), <https://twitter.com/realDonaldTrump/status/908276308265795585>.

⁶⁶ Donald Trump (@realDonaldTrump), TWITTER (Sept. 14, 2017, 5:35 AM), <https://twitter.com/realDonaldTrump/status/908278070611779585>.

⁶⁷ Reilly, *supra* note 53; *Regents of Univ. of Cal. v. Dep't of Homeland Sec.*, No. C 17-05211 WHA, 2018 U.S. Dist. LEXIS 4036, at *34 (N.D. Cal. Jan. 9, 2018) (citing the President's tweets as evidence that DACA furthered laudable goals).

mistake. This Congress will continue working on securing our border and ensuring a lawful system of immigration that works.⁶⁸

Former President Obama responded to the rescission of his program in a post on Facebook.

[T]oday, that shadow has been cast over some of our best and brightest young people once again. To target these young people is wrong – because they have done nothing wrong. It is self-defeating – because they want to start new businesses, staff our labs, serve in our military, and otherwise contribute to the country we love. And it is cruel.⁶⁹

These responses from public officials illustrate just how varied and contentious the debate on how to deal with undocumented youths in the U.S. is. In Sen. McConnell’s view, President Trump’s administration ceased the overreaching of the previous administration.⁷⁰ To the man whose administration had implemented DACA, though, the rescission was not only unjust but unwise.⁷¹

C. A Possible Revival of DACA

On January 9, 2018, a federal judge in California issued another injunction—this time, an order enjoining the protection of DACA.⁷² In his opinion, Judge William Alsup of the Northern District of California reasoned,

In short, what exactly is the part of DACA that oversteps the authority of the agency? Is it the granting of deferred action itself? No, deferred action has been

⁶⁸ MCCONNELL STATEMENT ON ADMINISTRATION DACA ANNOUNCEMENT (Sept. 5, 2017) <https://www.mcconnell.senate.gov/public/index.cfm/2017/9/mcconnell-statement-on-administration-daca-announcement> .

⁶⁹ Obama, *supra* note 17.

⁷⁰ MCCONNELL, *supra* note 68.

⁷¹ Obama, *supra* note 17.

⁷² *Regents of Univ. of Cal.*, 2018 U.S. Dist. LEXIS 4036, at *91.

blessed by both the Supreme Court and Congress as a means to exercise enforcement discretion. Is it the granting of deferred action via a program . . . ? No, programmatic deferred action has been in use since at least 1997, and other forms of programmatic discretionary relief date back to at least 1956. Is it granting work authorizations coextensive with the two-year period of deferred action? No, aliens receiving deferred action have been able to apply for work authorization for decades. Is it granting relief from accruing “unlawful presence” for purposes of the INA’s bars on reentry? No, such relief dates back to the George W. Bush Administration for those receiving deferred action. Is it allowing recipients to apply for and obtain advance parole? No, once again, granting advance parole has all been in accord with pre-existing law. Is it combining all these elements into a program? No, if each step is within the authority of the agency, then how can combining them in one program be outside its authority, so long as the agency vets each applicant and exercises its discretion on a case-by-case basis?⁷³

Judge Alsup concluded that the 2012 version of DACA was incorrectly described by Attorney General Sessions as unlawful.⁷⁴ Congress had not rejected DACA; it had rejected the DREAM Act.⁷⁵ The Acting Secretary of the DHS had claimed that USCIS approved DACA applications as a matter of routine rather than discretion, but Judge Alsup found that the DHS had not provided sufficient evidence of denials of DACA applications merely on the grounds of discretion.⁷⁶ Contrary to Attorney General Sessions’s assertions, DACA and DAPA differed significantly enough that Judge Alsup stated that the defects of DAPA that rendered the program unenforceable did not apply to DACA.⁷⁷ Specifically, DAPA addressed a population already served by

⁷³ *Id.* at *67–68.

⁷⁴ *Id.* at *68–69.

⁷⁵ *Id.*

⁷⁶ *Id.* at *69–71.

⁷⁷ *Id.* at *71–76.

the Immigration and Nationality Act, whereas DACA applied to undocumented youths who had no other options for protection.⁷⁸ Judge Alsup concluded that the institution of DACA in 2012 “was and remains a lawful exercise of authority by DHS”⁷⁹ and enjoined the DHS to uphold DACA as had been enacted prior to the 2017 rescission.⁸⁰

President Trump did not take kindly to this new injunction, decrying the American judicial system as “broken and unfair”⁸¹ after Judge Alsup issued his opinion. The U.S. Department of Justice (DOJ) then announced that the federal government was appealing Judge Alsup’s decision, not only to the U.S. Court of Appeals for the Ninth Circuit, but also to the U.S. Supreme Court.⁸²

Nevertheless, USCIS subsequently issued guidance detailing how the government would process requests for DACA.⁸³ USCIS announced that current DACA recipients could request DACA again but that USCIS would not allow new requestors.⁸⁴ Additionally, USCIS announced that it would no longer process advance parole requests

⁷⁸ *Id.* at *76.

⁷⁹ *Id.* at *77.

⁸⁰ *Id.* at *91.

⁸¹ Donald Trump (@realDonaldTrump), TWITTER (Jan. 10, 2018, 9:11 AM), <https://twitter.com/realDonaldTrump/status/951094078661414912> (“It just shows everyone how broken and unfair our Court System [sic] is when the opposing side in a case (such as DACA) always runs to the 9th Circuit and almost always wins before being reversed by higher courts.”).

⁸² Josh Gerstein, *DOJ Seeking Supreme Court Review of DACA Ruling*, POLITICO (Jan. 16, 2018, 2:18 PM), <https://www.politico.com/story/2018/01/16/doj-to-appeal-ruling-that-blocked-trumps-daca-wind-down-341183> (describing the simultaneous appeals as an “unusual tactic”).

⁸³ This guidance was updated to include mention of the order subsequently issued by the United States District Court for the Eastern District of New York on February 13, 2018, which the USCIS found to have the same scope as the prior order from the Northern District of California’s order. U.S. Citizenship and Immigration Service, Deferred Action for Childhood Arrivals: Response to January 2018 Preliminary Injunction, <https://www.uscis.gov/humanitarian/deferred-action-childhood-arrivals-response-january-2018-preliminary-injunction> (last updated Feb. 14, 2018).

⁸⁴ *Id.*

from DACA recipients.⁸⁵ Other than those differences, however, DACA was effectively re-implemented so that it followed the guidelines put in place in 2012.⁸⁶

The fight is far from over, though; the U.S. federal government even shut down during January of 2018, partly due to debate over immigration concerns and DACA recipients in particular.⁸⁷ At the time of this composition, even more legislation is pending in the U.S. District Court for the District of Columbia,⁸⁸ and DHS Secretary Kirstjen M. Nielsen has issued a memorandum defending her predecessor's rescission.⁸⁹

At this point, with the future of DACA so murky, new legislation such as the BRIDGE Act must be considered to take care of these young people.⁹⁰

III. BENEFITS OF THE BRIDGE ACT

The BRIDGE Act has several benefits, most of which can be categorized in two different ways: efficiency concerns and considerations of fairness. Efficiency concerns involve the lengthy and time-consuming processes of removal proceedings and prosecutorial

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Stephen Collinson, Lauren Fox, Tal Kopan & Daniella Diaz, *Acrimony Deepens After Government Shutdown's First Day*, CNN POLITICS (Jan. 20, 2018, 9:19 PM) <https://www.cnn.com/2018/01/20/politics/government-shutdown-daca-deal-developments/index.html>.

⁸⁸ *NAACP v. Trump*, 298 F. Supp. 3d 209, 249 (D.D.C. 2018) (vacating the rescission of DACA but allowing the DHS to submit arguments of the rescission's validity within ninety days).

⁸⁹ Kirstjen M. Nielsen, Dep't of Homeland Security, Memorandum from Secretary Kirstjen M. Nielsen (June 22, 2018), https://www.dhs.gov/sites/default/files/publications/18_0622_S1_Memorandum_DACA.pdf.

⁹⁰ For updated information about current events and policy changes in immigration law, see PENN STATE LAW CENTER FOR IMMIGRANTS' RIGHTS CLINIC, <https://pennstatelaw.psu.edu/practice-skills/clinics/center-immigrants-rights> (last visited Jan. 10, 2019).

priorities. Considerations of fairness involve normative bases for protecting undocumented youths.

A. Efficiency Concerns

The fact of the matter is that removal proceedings⁹¹ require time and money.⁹² These government resources could instead be used to focus enforcement against people who pose a pronounced threat to national security.

The youths whom DACA and the BRIDGE Act protect by definition must have relatively clear criminal records.⁹³ These are generally not dangerous people. They are law-abiding youths, per the DACA non-offender requirement, on whom the government would be wasting time and resources by prosecuting.⁹⁴

DACA and the BRIDGE Act, respectively, have and would enable undocumented youths to come out of the shadows. Both would make the DHS's tasks easier by allowing prioritization of its enforcement efforts.⁹⁵

B. Considerations of Fairness

Most importantly, the BRIDGE Act protects undocumented youths who arrived in the U.S. as children.⁹⁶ These individuals are not in the U.S. through any fault or wrongdoing of their own. Children and juveniles cannot morally be held responsible for breaking American

⁹¹ "Removal proceedings" refer to the process of declaring a noncitizen either inadmissible or deportable, which can include evidentiary hearings and can sometimes ultimately result in a removal order. *See* 8 U.S.C.A. § 1229(a) (West 2017).

⁹² *See* Octavio Blanco, *How much it costs ICE to deport an undocumented immigrant*, CNN (Apr. 13, 2017, 10:04 AM), <http://money.cnn.com/2017/04/13/news/economy/deportation-costs-undocumented-immigrant/index.html>.

⁹³ Bar Removal of Individuals who Dream and Grow our Economy Act, S. 128, 115th Cong. (2017).

⁹⁴ *See* WALTER A. EWING, DANIEL E. MARTÍNEZ & RUBEN G. RUMBAUT, AM. IMMIGR. COUNCIL, *THE CRIMINALIZATION OF IMMIGRATION IN THE UNITED STATES* 7 (2015).

⁹⁵ *See* Obama, *supra* note 17.

⁹⁶ S. 128.

law by entering unlawfully or overstaying visas. This is known as the “minor” defense—the principle that minors cannot be held responsible for actual crime, a principle that manifests time and time again in U.S. legal codes as well as in international law.⁹⁷ Our criminal justice system requires that those who are punished must have notice that they have broken the law.⁹⁸ Notice means that someone knows or should know what the law is and knows or should know that he or she is breaking that law.⁹⁹ To punish youths for transgressions that they did not understand, either completely or at all, is unjust. The U.S. criminal justice system does not recognize young children as being able to possess the required criminal intent to be guilty of crimes.¹⁰⁰ To completely commit a crime, our jurisprudence requires a *mens rea*, a criminal state of mind.¹⁰¹ Young children, by American legal standards, cannot possess the requisite state of mind.¹⁰² Logically, this must hold true for immigration infractions.

Additionally, the U.S. may at this point be the country with which these undocumented youths identify the most.¹⁰³ Some may know English better than their native languages—that is, if they know any languages other than English at all.¹⁰⁴ Some have married and

⁹⁷ See CAL. PENAL CODE § 26 (Deering 2017) (rendering children under the age of fourteen as incapable of committing crimes “in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness”); GA. CODE ANN. § 16-3-1 (West 2017) (“A person shall not be considered or found guilty of a crime unless he has attained the age of 13 years at the time of the . . . crime.”); U.N. Secretary-General, *Secretary-General’s Report on Aspects of Establishing an International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia*, ¶ 58, 32 I.L.M. 1159 (1993) (asserting the need to consider “various personal defences which may relieve a person of individual criminal responsibility, such as minimum age or mental incapacity, drawing upon general principles of law recognized by all nations”).

⁹⁸ See *Fair Warning*, BLACK’S LAW DICTIONARY (10th ed. 2014).

⁹⁹ *Notice*, BLACK’S LAW DICTIONARY (10th ed. 2014).

¹⁰⁰ See sources cited *supra* note 97.

¹⁰¹ See *supra* notes 96–98 and accompanying text.

¹⁰² See *supra* notes 96–98 and accompanying text.

¹⁰³ Gloria Bonilla-Santiago, *DREAMERS are Americans Just like you and I: DACA must become a Law*, HUFFINGTON POST (Sept. 25, 2017, 12:20 PM), https://www.huffingtonpost.com/entry/dreamers-are-americans-just-like-you-and-i-daca-must_us_59c92c3ae4b08d6615504484.

¹⁰⁴ *Id.*

started families of their own—and some of their children might be native-born American citizens themselves.¹⁰⁵ Breaking up these families runs contrary to our values as Americans, such as the importance of family unity.¹⁰⁶ These values are manifested even in our current immigration system that prioritizes family immigration and reuniting families in the U.S.¹⁰⁷

C. Public Health Concerns

Undocumented immigrants face particular public health challenges because they are barred from receiving public funds, including programs such as Medicare and Medicaid.¹⁰⁸

Lack of access to appropriate healthcare is not the only health-related challenge facing undocumented immigrants, however: in any population, a minority that experiences some kind of discrimination typically suffers from more frequent health problems than those who

¹⁰⁵ See USCIS, DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) POPULATION DATA (2017), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_population_data.pdf; Priscilla Alvarez, *Will DACA Parents Be Forced to Leave Their U.S.-Citizen Children Behind?*, ATLANTIC (Oct. 21, 2017), <https://www.theatlantic.com/politics/archive/2017/10/donald-trump-daca/543519/>.

¹⁰⁶ See Mark Penn, *Americans Are Losing Confidence in the Nation but Still Believe in Themselves*, ATLANTIC (June 27, 2012), <https://www.theatlantic.com/national/archive/2012/06/americans-are-losing-confidence-in-the-nation-but-still-believe-in-themselves/259039/> (“Family, schools, and friends remain the source of and greatest reported influence on American values, underscoring the importance of policies that support working families and education reform.”).

¹⁰⁷ *Lau v. Kiley*, 563 F.2d 543, 547 (2d Cir. 1977) (“[T]he foremost policy underlying the granting of preference visas under our immigration laws . . . [is] that of the reunification of families. . . .”). See, e.g., Immigration and Nationality Act (INA) § 212(a)(6)(E)(ii), 8 U.S.C.A. § 1182(a)(6)(E)(ii) (West 2016).

¹⁰⁸ Karen Hacker et al., *Barriers to Health Care for Undocumented Immigrants: A Literature Review*, 8 RISK MGMT. & HEALTHCARE POL’Y 175, 178 (2015) (describing public policy measures barring access to health insurance and healthcare services as the most common obstacles to undocumented immigrants in obtaining healthcare).

do not face such discrimination.¹⁰⁹ For example, a young undocumented man who earns the same amount of money as a similar young man who has some sort of immigration status may experience more health problems, even though all his other demographic characteristics may match his documented counterpart exactly.¹¹⁰

IV. PROBLEMS WITH THE BRIDGE ACT

The BRIDGE Act is not without its drawbacks, however. No solution is without flaws, and any attempt to include everyone will still inevitably allow vulnerable people to slip through the cracks, so to speak.

The two main categories of problems with the BRIDGE Act are predominantly policy concerns: (1) the false dichotomy of the worthiness of applicants, and (2) the practical drawbacks involved in compiling evidence and neglecting a vulnerable population.

A. Policy Concerns

The two major policy concerns raised by the BRIDGE Act both involve the population affected by the Act. These concerns can best be described as follows: (1) the worthiness dichotomy, and (2) economic value. The worthiness dichotomy concerns the narratives surrounding the immigration debate. Economic value involves the socioeconomic priorities that the immigration system exhibits and that the BRIDGE Act upholds.

1. The Worthiness Dichotomy

From a policy standpoint, the BRIDGE Act and its predecessors illustrate our priorities as a society when it comes to immigration. Americans tend to find undocumented youths, particularly those pursuing education and employment opportunities,

¹⁰⁹ See LAWRENCE O. GOSTIN & LINDSAY F. WILEY, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 533–34 (3d ed. 2016).

¹¹⁰ See *id.*

more sympathetic than other groups of undocumented immigrants for two reasons: lack of blameworthiness and economic potential.¹¹¹

The problem with this dichotomy is that, as with many dichotomies, it is a false one. No one, immigrant or native-born American, is entirely good or bad, and a criminal record or lack thereof certainly should not be the determining factor in deciding someone's intrinsic worth. Certainly, the relief available to immigrants in need should not be determined by a narrative that may or may not apply to all requestors.¹¹² Additionally, many native-born Americans would likely not pass the strict standards of inadmissibility on criminal grounds, so imposing those standards on a population of people who simply happen to be born outside our borders makes no logical sense.

2. Economic Value

Moreover, Americans tend to value immigrants in whom they see economic potential over those whom we suspect will contribute little or nothing to our economy.¹¹³ This sentiment is likely what drives programs like the BRIDGE Act or DACA to include educational requirements; we as a nation do not want to offer protections to those who may not be able to “earn their keep,” so to speak. Therefore, the poor and the uneducated, those who might benefit the most from starting new lives in the U.S., cannot afford to pursue such a route because the BRIDGE Act does not offer them relief in this regard.

¹¹¹ See Elizabeth Keyes, *Beyond Saints and Sinners: Discretion and the Need for New Narratives in the U.S. Immigration System*, 26 GEO. IMMIGR. L. REV. 207 *passim* (2012) (arguing that the heuristics used by immigration courts and judges reveal a dichotomy between deserving and undeserving immigrants for which lawyers must account when advocating for the best interests of their clients).

¹¹² See Elizabeth Keyes, *Beyond Saints and Sinners: Discretion and the Need for New Narratives in the U.S. Immigration System*, 26 GEO. IMMIGR. L. REV. 207 *passim* (2012) (arguing that the heuristics used by immigration courts and judges reveal a dichotomy between deserving and undeserving immigrants for which lawyers must account when advocating for the best interests of their clients).

¹¹³ See Immigration and Nationality Act (INA) § 212(a)(4), 8 U.S.C.A. § 1182(a)(4) (West 2016) (rendering noncitizens who are “likely at any time to become a public charge” inadmissible).

B. Practical Concerns

The BRIDGE Act has some practical failings, too, due to its similarity to the original DACA requirements. The eligibility requirements include continuous and physical presence in the U.S. since June 15, 2007, but presence alone is not enough. Requestors must prove continuous physical presence by submitting documentation of such a presence.¹¹⁴

Often, this takes the form of school or medical records, records that can be easily lost or destroyed over time. Even if requestors instead rely on affidavits of acquaintances or community leaders, tracking down witnesses to vouch for their presence can be an arduous task, accounting for the entire length of time that has elapsed since 2007. Over a decade's worth of proof of continuous, physical presence would be hard to come by, even for native-born Americans.¹¹⁵

Additionally, while the BRIDGE Act seeks to protect those who are no longer protected by DACA, this refusal to alter the dates means that undocumented youths will still fall through the cracks, such as juveniles who have only just now turned fifteen (15). Further legislative reforms are needed if the youths whose futures we want to preserve can have a lasting foundation. Normatively, perhaps a similar program can be created for juveniles who missed the original cut-off dates but who would now be eligible for DACA protections. On the other hand, Congress could possibly create a program that would allow such juveniles the opportunity to petition for themselves as immigrants, like Violence Against Women Act ("VAWA") self-petitioners do.¹¹⁶ Alternatively, Congress could expand Special Juvenile

¹¹⁴ See Napolitano, *supra* note 12.

¹¹⁵ See, e.g., 8 C.F.R. § 316.5 (2012).

¹¹⁶ VAWA refers to the Violence Against Women Act, which, among other things, allowed battered spouses and children the ability to petition for themselves to acquire visas. Normally, a petitioner must be someone other than the person seeking admission to the United States. Most often, this is an employer or a family member. However, in the case of battered spouses and children, to prevent such injured parties from leaving dangerous situations merely for the sake of acquiring immigration status, Congress has allowed such injured parties to petition for themselves. See Immigration and Nationality Act (INA) § 204(a), 8 U.S.C.A.

Immigrant Status (“SIJS”) to include such juveniles who risk abandonment if their parents are deported.¹¹⁷

V. AN ALTERNATIVE METHOD OF DEALING WITH UNDOCUMENTED YOUTHS

The U.S. is not the only nation facing problems involving undocumented youths. In this section, I will describe the status of undocumented youths in other countries and the programs, or lack thereof, which other nations provide for them. Then, I will compare and contrast these programs to our own American solutions.

A. A Brief Overview of Immigration in Canada

In this section, I will present a brief overview of the current state of undocumented youths in Canada, including comparisons and contrasts to the population of undocumented youths in the U.S.

Canada receives approximately 300,000 immigrants seeking permanent residence annually.¹¹⁸ However, the number of undocumented immigrants in Canada only amounts to approximately 150,000.¹¹⁹ This number pales in comparison to the United States’ undocumented population; in 2015, the Pew Research Center estimated that approximately 11 million undocumented immigrants resided in the U.S.¹²⁰ To clarify, this means that Canada’s

§ 1154(a) (West 2016); Immigration and Nationality Act (INA) § 240A(b)(2), 8 U.S.C.A. § 1229b(b)(2) (West 2016).

¹¹⁷ SIJS refers to a special immigrant status that the United States offers to juveniles who have been abandoned, neglected, or abused by their parents and/or legal guardians. Immigration and Nationality Act (INA) § 101(a)(27)(J), 8 U.S.C.A. § 1101(a)(27)(J) (West 2016).

¹¹⁸ Marisa Peñaloza & John Burnett, *For A Stark Contrast To U.S. Immigration Policy, Try Canada*, NPR (January 26, 2017, 5:05 AM), <https://www.npr.org/sections/parallels/2017/01/26/511625609/for-a-stark-contrast-to-u-s-immigration-policy-try-canada>.

¹¹⁹ Peñaloza & Burnett, *supra* note 118.

¹²⁰ Jens Manuel Krogstad, Jeffrey S. Passel & D’Vera Cohn, *5 facts about illegal immigration in the U.S.*, PEW RESEARCH CENTER (Apr. 27, 2017), <http://www.pewresearch.org/fact-tank/2017/04/27/5-facts-about-illegal-immigration-in-the-u-s/>.

undocumented population is just over one-percent the size of America's undocumented population.

Canada's undocumented population differs from popular perception of the undocumented population in the U.S. in one striking way: while Americans may associate lack of immigration status with crossing the border between the U.S. and Mexico without being inspected by the government, the majority of Canada's undocumented population consists of those who have entered through authorized legal channels, such as visa overstay.¹²¹

Additionally, Canada's universal healthcare system means that undocumented immigrants in Canada are barred from a social service that they could otherwise access freely.¹²²

B. Canada's BRIDGE Analogue

Canada does not have a program that corresponds exactly to DACA or the BRIDGE Act.¹²³ However, Canada does offer a path to citizenship for refugees.¹²⁴ Note that refugees cannot file a refugee claim in Canada if they are currently under an order of removal.¹²⁵

Foreign nationals in Canada who may not be eligible for current available permanent residence grounds may qualify on

¹²¹ Lilian Magalhaes, Christine Carrasco & Denise Gastaldo, *Undocumented Migrants in Canada: A Scope Literature Review on Health, Access to Services, and Working Conditions*, 12(1) J. IMMIGRANT & MINORITY HEALTH 132–51 (2010).

¹²² See *id.*

¹²³ Vince Wong, *Canada Has Done Even Less For Its 'Dreamers' Than The U.S.*, HUFFPOST CANADA (Sept. 11, 2017), http://www.huffingtonpost.ca/vince-wong/canada-has-done-even-less-for-its-dreamers-than-the-u-s_a_23202268/.

¹²⁴ LIBRARY OF CONGRESS, CITIZENSHIP PATHWAYS AND BORDER PROTECTION: CANADA, <https://www.loc.gov/law/help/citizenship-pathways/canada.php> (last updated July 30, 2015).

¹²⁵ GOV'T OF CAN., FIND OUT IF YOU'RE ELIGIBLE – REFUGEE STATUS FROM INSIDE CANADA, <http://www.cic.gc.ca/english/refugees/inside/apply-who.asp> (last modified Oct. 11, 2017). A “removal order” refers to one of three kinds of documents issued by the Canadian government that terminates a legal stay in Canada and requires that the recipient leave Canada. CAN. BORDER SERVICES AGENCY, ARRESTS, DETENTIONS AND REMOVALS, <https://www.cbsa-asfc.gc.ca/security-securite/rem-ren-eng.html> (last modified May 17, 2018).

humanitarian and compassionate (“H&C”) grounds.¹²⁶ The Canadian immigration website states that Immigration, Refugees and Citizenship Canada (“IRCC”) ¹²⁷ evaluates several factors when determining whose petitions will be granted on H&C grounds. These factors include: (1) the strength of an applicant’s ties to Canada, (2) the family ties that an applicant may or may not have in Canada, (3) the best interests of any involved children, if applicable, and (4) the alternatives if an applicant’s application is denied.¹²⁸

Similar to the DACA application process, applications based on H&C grounds are reviewed on a case-by-case basis, and applicants whose applications are rejected may not appeal the decisions of IRCC.¹²⁹ Additionally, applications based on H&C grounds are only available to applicants for permanent residence, so students and temporary workers are barred from using H&C grounds.¹³⁰ Rejected applications are not appealable.¹³¹ However, those who currently have removal orders from Canadian immigration may be able to apply to remain in Canada on H&C grounds, but such an application does not halt the removal process.¹³² IRCC will nevertheless continue to review applications of those who have been removed from Canada.¹³³

Those who enter Canada illegally are considered to be “irregular arrival[s].”¹³⁴ These irregular arrivals are classified as “designated foreign national[s].”¹³⁵ Designated foreign nationals

¹²⁶ GOV’T OF CAN., HUMANITARIAN AND COMPASSIONATE GROUNDS, <http://www.cic.gc.ca/english/refugees/inside/h-and-c.asp> (last modified Sept. 13, 2017).

¹²⁷ This body is responsible for Canadian immigration. Its responsibilities include granting visas and citizenship. GOV’T OF CAN., IMMIGR., REFUGEES AND CITIZENSHIP CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship.html> (last modified Dec., 4, 2017).

¹²⁸ GOV’T OF CAN., HUMANITARIAN AND COMPASSIONATE GROUNDS, <http://www.cic.gc.ca/english/refugees/inside/h-and-c.asp> (last modified Sept. 13, 2017).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

(“DFNs”) have special requirements imposed on them by Canadian immigration. For example, DFNs are barred from applying for residence on H&C grounds until five years after they have become designated foreign nationals.¹³⁶ Additionally, designated foreign nationals who have either filed a refugee claim or applied for protection are barred from applying for permanent residence on H&C grounds until five years after they have filed the claim or received the final determination in their application for protection, respectively.¹³⁷

1. Benefits of the Canadian Approach

Unlike the provisional protected presence offered by the BRIDGE Act, H&C grounds enable undocumented youths to apply for permanent residence.¹³⁸ This is a noted difference when compared to the BRIDGE Act, and it in fact resembles the DREAM Act.¹³⁹

IRCC imposes a period of time on designated foreign nationals for which they must wait before applying for permanent residence on H&C grounds.¹⁴⁰ Unlike the DACA requirement, though, the five-year period for Canadian permanent residence is flexible—it begins when an applicant’s status as a DFN begins.¹⁴¹ This ultimately means that no one is barred from applying for permanent residence merely because they failed to enter Canada by a particular date.¹⁴²

2. Problems with the Canadian Approach

Canada’s approach to undocumented youths is not without its problems. For one thing, Canada’s approach is inefficient. An applicant can be removed from Canada while awaiting approval for his

¹³⁶ See Protecting Canada’s Immigration System Act, S.C. 2012, c. 17; HUMANITARIAN AND COMPASSIONATE GROUNDS, *supra* note 128.

¹³⁷ Protecting Canada’s Immigration System Act, S.C. 2012, c. 17.

¹³⁸ See HUMANITARIAN AND COMPASSIONATE GROUNDS, *supra* note 128; Bar Removal of Individuals who Dream and Grow our Economy Act, S. 128, 115th Cong. (2017).

¹³⁹ See S. 128; Dream Act of 2017, S. 1615, 115th Cong. (2017).

¹⁴⁰ See HUMANITARIAN AND COMPASSIONATE GROUNDS, *supra* note 128.

¹⁴¹ *Id.*; Napolitano, *supra* note 12.

¹⁴² This is unlike the DACA requirements. See Napolitano, *supra* note 11.

or her application.¹⁴³ While not all applicants will be removed pending approval, the possibility remains that Canada could spend all necessary expenses on removal proceedings in addition to the costs of processing applications simultaneously.¹⁴⁴ If the application is then approved, the applicant must, after spending money to leave Canada, spend even more resources to return as a permanent resident.¹⁴⁵ This effectively means that Canada will have wasted time and critical funds on ultimately unnecessary removal proceedings.¹⁴⁶

Were the U.S. to adopt a similar approach, the U.S. would need to modify the current Canadian procedure to eliminate such waste in this regard. Merely stating that an application for provisional protected presence offered by the BRIDGE Act will halt any removal proceedings should account for an appropriate remedy and prevent unnecessary spending by both the government and the applicant.¹⁴⁷

Additionally, Canada's stipulations for DFNs impose a time requirement similar to that of DACA's.¹⁴⁸ This means that DFNs in Canada must wait for five years before applying for permanent residence on H&C grounds. Designated foreign nationals in Canada must live in the shadow of the law for half a decade before being able to come out into the light.¹⁴⁹ Such a requirement merely serves to perpetuate the potentially dangerous living conditions of applicants, forcing them to remain in fear and uncertainty while they wait for their time to emerge.¹⁵⁰ Should the U.S. adopt a similar system to Canada, a potential solution to this requirement would be something similar to a provision contained in the 2017 DREAM Act bill: allowing undocumented youths to apply for conditional permanent residence.¹⁵¹ Alternatively, Congress could supplement the BRIDGE Act by allowing those approved for provisional protected presence to later

¹⁴³ HUMANITARIAN AND COMPASSIONATE GROUNDS, *supra* note 128.

¹⁴⁴ *See id.*

¹⁴⁵ *See id.*

¹⁴⁶ *See id.*

¹⁴⁷ *See id.*

¹⁴⁸ *See id.*; Napolitano, *supra* note 11.

¹⁴⁹ HUMANITARIAN AND COMPASSIONATE GROUNDS, *supra* note 128.

¹⁵⁰ *Id.*

¹⁵¹ *See* Dream Act of 2017, S. 1615, 115th Cong. (2017).

apply for lawful permanent residence, treating the provisional protected presence as a condition.¹⁵² These solutions would allow undocumented youths to obtain some sort of sense of security rather than waiting in fear for half a decade for their opportunity to live free from the threat of immigration enforcement.

Furthermore, Canada may be one of our closest neighbors, but its immigration system reflects its demographic differences from the U.S. For one thing, Canada's undocumented population is estimated to be approximately one-percent of the United States' undocumented population.¹⁵³ Consequently, solutions that may work on a much smaller undocumented Canadian scale may not work for the much larger undocumented American population. Even if the basic structure of Canadian solutions were to function perfectly in the U.S., the sheer difference in scale between the two populations means that even such a system would likely take longer to address all the people it is meant to serve. Thus, the implementation of solutions for undocumented youths will perhaps require more community support and engagement so that undocumented youths can obtain the protections that they need.

VI. CONCLUSION

Time is running out for undocumented youths. The extension offered by the DACA rescission was set to expire in March of 2018, but that deadline has long since passed. While President Trump has previously hinted that meetings concerning the fates of DACA recipients were underway,¹⁵⁴ he has also stated that no deal will be reached without funding for construction of a wall along the border of

¹⁵² See Immigration and Nationality Act (INA) § 216, 8 U.S.C.A. § 1186a (West 2016).

¹⁵³ See Peñaloza & Burnett, *supra* note 118; Krogstad et al., *supra* note 120.

¹⁵⁴ See Donald Trump (@realDonaldTrump), TWITTER (Jan. 7, 2018, 9:33 AM), <https://twitter.com/realDonaldTrump/status/950012437788585985>.

Mexico and an end to the diversity visa lottery¹⁵⁵ program.¹⁵⁶ He restated these priorities as important to border security during a bipartisan meeting about the fate of DREAMers¹⁵⁷ Additionally, the President has emphasized the importance of bringing an end to “chain migration,”¹⁵⁸ something he says is essential to reaching a deal on

¹⁵⁵ The diversity visa lottery program is a current avenue for immigrants seeking to come to the United States from countries that have been historically underrepresented in the immigrant population. U.S. CITIZENSHIP & IMMIGR. SERV., GREEN CARD THROUGH THE DIVERSITY IMMIGRANT VISA PROGRAM, <https://www.uscis.gov/greencard/diversity-visa> (last updated Jan. 11, 2018). Often, these immigrants come from countries in Africa or Europe. DEP’T OF STATE, NUMBER OF VISA ISSUANCES AND ADJUSTMENTS OF STATUS IN THE DIVERSITY IMMIGRANT CATEGORY (2005–2014), <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2014AnnualReport/FY14AnnualReport-TableVII.pdf> (last visited July 23, 2018). The diversity visa lottery program is currently under fire due to an incident that occurred in 2017 when an immigrant who came to the United States on a diversity visa committed a widely publicized crime of violence. *See, e.g.*, Tal Kopan, *What Is the Diversity Visa Lottery?*, CNN (Nov. 1, 2017, 3:26 PM), <https://www.cnn.com/2017/11/01/politics/diversity-visa-lottery-schumer-trump/index.html>.

¹⁵⁶ Donald Trump (@realDonaldTrump), TWITTER (Dec. 29, 2017, 8:16 AM), <https://twitter.com/realDonaldTrump/status/946731576687235072>.

¹⁵⁷ Tamara Keith, *Trump Ties Immigration Demands To DACA Deal, Including Border Wall*, NPR (Oct. 8, 2017, 10:29 PM), <http://www.npr.org/2017/10/08/556564184/trump-sends-immigration-principles-to-congress-including-border-wall-demand>.

¹⁵⁸ “Chain migration” refers to a common process in family-based immigration. The idea is essentially that an initial immigrant will list derivatives on his or her application, bringing more and more people into the United States. Alternatively, the initial applicant could attain lawful permanent residence or even citizenship and thus be able to sponsor family members to join him or her in the United States. *See, e.g.*, Immigration and Nationality Act (INA) § 201(b)(2)(A)(i), 8 U.S.C.A. § 1151(b)(2)(A)(i) (West 2016); INA § 201(c), 8 U.S.C.A. § 1151(c) (West 2016); INA § 203(a), 8 U.S.C.A. § 1153(a) (West 2016). *See also* Linda Qiu, ‘Chain Migration’ Has Become a Weaponized Phrase. Here Are the Facts Behind It, N.Y. TIMES (Jan. 26, 2018), <https://www.nytimes.com/2018/01/26/us/politics/the-facts-behind-the-weaponized-phrase-chain-migration.html>.

DACAmented¹⁵⁹ youths.¹⁶⁰ Despite pressure to pass a so-called “clean”¹⁶¹ DACA bill, President Trump still seems to desire to add other elements to a potential bill containing multiple immigration-related reforms.¹⁶²

As it stands now, the BRIDGE Act may or may not pass. Congress is again at an impasse, and the White House announced its principles for immigration reform and border security on October 8, 2017.¹⁶³ Among these principles, the administration echoed the President’s desired funding for the oft-promised border wall between the U.S. and Mexico.¹⁶⁴

The version of the BRIDGE Act currently in the House of Representatives has been referred to the Subcommittee on Immigration and Border Security as of February 6, 2017.¹⁶⁵ On September 5, 2017—the same day that the DACA rescission memo was issued¹⁶⁶—Rep. Mike Coffman (R) filed a motion to discharge¹⁶⁷

¹⁵⁹ “DACAmented” is a term often used to refer to DACA recipients. Roberto G. Gonzales, *DACA at Year Three: Challenges and Opportunities in Accessing Higher Education and Employment*, AM. IMMIGR. COUNCIL (Feb. 1, 2016), <https://www.americanimmigrationcouncil.org/research/daca-year-three-challenges-and-opportunities-accessing-higher-education-and-employment>.

¹⁶⁰ Keith, *supra* note 157.

¹⁶¹ A “clean” DACA bill would be one that only addresses protections for undocumented youths and would exclude things like funding for Pres. Trump’s proposed wall. *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.* See also Three-Year Border and DACA Extension Act, S. 2464, 115th Cong. (2018) (including funding for a border wall along with an extension of DACA relief).

¹⁶⁵ CONGRESS, ACTIONS — H.R.496 — 115TH CONGRESS (2017–2018): BRIDGE ACT, <https://www.congress.gov/bill/115th-congress/house-bill/496/all-actions> (last visited July 24, 2018).

¹⁶⁶ Duke, *supra* note 55.

¹⁶⁷ A “motion to discharge” can be filed when a committee does not report its resolution of inquiry after fourteen (14) legislative days. This is the only way a resolution can be reached in the House of Representatives if the committee does not report. R. OF THE HOUSE OF REPRESENTATIVES XIII, § 867.

the House Committee on the Judiciary.¹⁶⁸ No action, however, has been taken on the Senate version of the bill since the bill was read and referred to the Committee on the Judiciary on January 12, 2017.¹⁶⁹

Whether our representatives will be able to set aside their differences and collaborate to pass the BRIDGE Act or one of its corollaries remains to be seen, but the benefits of the BRIDGE Act outweigh its potential drawbacks. Even President Trump expressed hope that Congress can reach a solution for the thousands of DREAMers who are waiting for a chance to gain legal status.¹⁷⁰ During a bipartisan meeting in January of 2018, President Trump proposed suggestions to the current situation in which these DREAMers have found themselves,¹⁷¹ but the recent developments in California federal court may have soured his opinion.¹⁷² Nevertheless, the President has

¹⁶⁸ Motion to Discharge a Committee from the Consideration of a Bill, H.R. 496, 115th Cong (2017), <http://clerk.house.gov/115/lrc/pd/petitions/DisPet0004.xml>

¹⁶⁹ CONGRESS, ACTIONS – S. 128 – 115TH CONGRESS – (2017–2018): BRIDGE ACT, <https://www.congress.gov/bill/115th-congress/senate-bill/128/all-actions> (last visited July 24, 2018).

¹⁷⁰ Julie Hirschfeld Davis & Sheryl Gay Stolberg, *Trump Appears to Endorse Path to Citizenship for Millions of Immigrants*, N.Y. TIMES (Jan. 9, 2018), <https://www.nytimes.com/2018/01/09/us/politics/trump-daca-immigration.html>; Laura Meckler & Kristina Peterson, *Donald Trump Is Optimistic a Deal Can Be Reached on Dreamers*, WALL STREET J. (Jan. 9, 2018), <https://www.wsj.com/articles/donald-trump-is-optimistic-a-deal-can-be-reached-on-dreamers-1515534227?mod=e2tw> (last updated Jan. 10, 2018). *But see* Donald Trump (@realDonaldTrump), TWITTER (Jan. 9, 2018, 7:16 PM), <https://twitter.com/realDonaldTrump/status/950884128379035650> (“As I made very clear today, our country needs the security of the Wall on the Southern Border, which must be part of any DACA approval.”); Donald Trump (@realDonaldTrump), Twitter (Feb. 5, 2018, 9:36 AM), <https://twitter.com/realDonaldTrump/status/960522569492426753> (“Any deal on DACA that does not include STRONG border security and the desperately needed WALL is a total waste of time. March 5th is rapidly approaching and the Dems seem not to care about DACA. Make a deal!”).

¹⁷¹ Keith, *supra* note 157.

¹⁷² Donald Trump (@realDonaldTrump), TWITTER (Jan. 10, 2018, 9:11 AM), <https://twitter.com/realDonaldTrump/status/951094078661414912>.

previously stated that negotiations concerning DACA recipients would shortly be underway.¹⁷³

The BRIDGE Act serves aptly as a bridge during this time of transition and uncertainty. It may not offer a permanent solution for all those forced to live in the shadows, but its close parallels to DACA will help ease DACA recipients into their post-DACA lives—at least until more permanent and more generous reforms can take hold.

¹⁷³ Donald Trump (@realDonaldTrump), TWITTER (Feb. 9, 2018, 8:59 AM), <https://twitter.com/realDonaldTrump/status/961962694650757121>.